

Message

**From:** Goforth, Kathleen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0821CCF0EA9E4C18A3D2A583158B713E-KGOFORTH]  
**Sent:** 4/17/2017 3:21:25 PM  
**To:** Johnson, Kathleen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d36de0cd8ee14ff6a6aa2f1df9b159f6-KJOHNS05]; Moutoux, Nicole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=574b3a85014d46d3965b59700a04a55e-NMOUTOUX]  
**Subject:** Fwd: Rosemont letter

# Deliberative Process / Ex. 5

-Kathy

Sent from my iPhone

Begin forwarded message:

**From:** "Tomiak, Robert" <[tomiak.robert@epa.gov](mailto:tomiak.robert@epa.gov)>  
**Date:** April 15, 2017 at 3:24:06 AM PDT  
**To:** "Johnson, Kathleen" <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>  
**Cc:** "Moutoux, Nicole" <[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)>, "Goforth, Kathleen" <[Goforth.Kathleen@epa.gov](mailto:Goforth.Kathleen@epa.gov)>, "Suriano, Elaine" <[Suriano.Elaine@epa.gov](mailto:Suriano.Elaine@epa.gov)>, "Knight, Kelly" <[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>, "Marshall, Tom" <[marshall.tom@epa.gov](mailto:marshall.tom@epa.gov)>, "Eisenberg, Mindy" <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>, "Goodin, John" <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>, "Brush, Jason" <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>  
**Subject:** Re: Rosemont letter

I appreciate the clarification. Just so I'm clear, Alexis is still providing an update to the political team, correct? Do you know who that goes to?

Second, you all are drafting a response to the letter. Is Alexis "responding on behalf of the Administrator" or providing a recommended response to OICR (or someone else) to staff at HQ?

Just want to ensure I understand and can support all the pieces.

Thanks, Rob

On Apr 14, 2017, at 7:38 PM, Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)> wrote:

Hey Rob,

# Deliberative Process / Ex. 5

We also know that the Army Corp is in the midst of further discussions which we hope could lead to a decision soon. After the technical meeting on April 18<sup>th</sup> and Ted's conversations with FS, we will have a better idea of where we are. In the event we need to brief the Administrator, we would certainly develop briefing papers more extensive than the summary one-pager and would include your suggestions.

We will get you copies of the letters you requested.

Thanks, and we will be in touch on this next week.

Kathleen H. Johnson  
Director, Enforcement Division  
U.S. EPA - Region 9  
75 Hawthorne Street ENF-1  
San Francisco, CA 94015  
415/972-3873  
[johnson.kathleen@epa.gov](mailto:johnson.kathleen@epa.gov)

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**From:** Tomiak, Robert  
**Sent:** Friday, April 14, 2017 7:01 AM  
**To:** Moutoux, Nicole <[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)>; Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>  
**Cc:** Goforth, Kathleen <[Goforth.Kathleen@epa.gov](mailto:Goforth.Kathleen@epa.gov)>; Suriano, Elaine <[Suriano.Elaine@epa.gov](mailto:Suriano.Elaine@epa.gov)>; Knight, Kelly <[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>; Marshall, Tom <[marshall.tom@epa.gov](mailto:marshall.tom@epa.gov)>; Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Brush, Jason <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>  
**Subject:** RE: Rosemont letter

One point, one ask, and one recommendation:

- <!--[if !supportLists]--><!--[endif]-->I think you need to speak to the part of the Governors letter that talks about the Corps not issuing a permit until the EPA's concerns (via April 14, 2015 memo) are resolved. The paper seems to go light on the 404 component.

Please send me the April 14, 2015 memo and the State's June 12<sup>th</sup> response. I fully understand this is a memo that went out from your OW office, but I think we all here at HQ need those two documents for the full picture.

My recommendation is that you lay out options for the Administrator, potentially with pros and cons of each, if appropriate.....rather than characterize this as a "go or no-go" referral decision. For example, one option would be for the Administrator to respond with a letter (drafted by R9) that lends support, but reinforces the need to remedy critical deficiencies. Another option would be for the EPA to commit to hosting a collaborative dispute resolution discussion with USACE and the company. Sure that you all have other thoughts on options as well.....just thinking out loud a bit.

Thanks, Rob

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**From:** Moutoux, Nicole  
**Sent:** Thursday, April 13, 2017 6:24 PM  
**To:** Tomiak, Robert <[tomiak.robert@epa.gov](mailto:tomiak.robert@epa.gov)>; Johnson, Kathleen

<[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>

**Cc:** Goforth, Kathleen <[Goforth.Kathleen@epa.gov](mailto:Goforth.Kathleen@epa.gov)>; Suriano, Elaine <[Suriano.Elaine@epa.gov](mailto:Suriano.Elaine@epa.gov)>; Knight, Kelly <[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>; Marshall, Tom <[marshall.tom@epa.gov](mailto:marshall.tom@epa.gov)>; Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; Goodin, John <[Goodin.John@epa.gov](mailto:Goodin.John@epa.gov)>; Brush, Jason <[Brush.Jason@epa.gov](mailto:Brush.Jason@epa.gov)>

**Subject:** Re: Rosemont letter

Hi Rob-

Per Kathleen's message below, here is the 1-pager on Rosemont that our Acting RA will send out later today.

Thanks  
Nicole

Nicole G. Moutoux  
Assistant Director  
Enforcement Division, ENF-4  
desk 415-972-3012  
mobile 415-271-0701  
[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)

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**From:** Tomiak, Robert  
**Sent:** Wednesday, April 12, 2017 4:12:00 PM  
**To:** Johnson, Kathleen  
**Cc:** Moutoux, Nicole; Goforth, Kathleen; Suriano, Elaine; Knight, Kelly; Marshall, Tom; Eisenberg, Mindy; Goodin, John; Brush, Jason  
**Subject:** Re: Rosemont letter

Good plan; thanks! Rob

On Apr 12, 2017, at 6:46 PM, Johnson, Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)> wrote:

I spoke with Alexis about this today. She puts together an email every Thursday and sends to the political team in Washington. She would like to provide the issue paper to the team through the mechanism of her Thursday email. FYI, yesterday, we hosted Ken Wagner, who is a newly installed political serving as a Regional Liaison to the Administrator. She gave Ken a heads up on this issue when he was here yesterday.

We had created a one-pager on this to put in a briefing book for our new (anticipated) RA. We can dust off that paper and add the latest info.

Kathleen H. Johnson  
Director, Enforcement Division  
U.S. EPA - Region 9  
75 Hawthorne Street ENF-1  
San Francisco, CA 94015  
415/972-3873  
[johnson.kathleen@epa.gov](mailto:johnson.kathleen@epa.gov)

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**From:** Tomiak, Robert  
**Sent:** Wednesday, April 12, 2017 4:17 AM  
**To:** Moutoux, Nicole <[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)>; Johnson, Kathleen

<Johnson.Kathleen@epa.gov>; Goforth, Kathleen

<Goforth.Kathleen@epa.gov>

**Cc:** Suriano, Elaine <Suriano.Elaine@epa.gov>; Knight, Kelly

<knight.kelly@epa.gov>; Marshall, Tom <marshall.tom@epa.gov>;

Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John

<Goodin.John@epa.gov>

**Subject:** Re: Rosemont letter

One follow up thought: would also appreciate your thoughts on who should forward an issue paper...OW, OECA, or R9....

Thanks, Rob

On Apr 12, 2017, at 7:12 AM, Tomiak, Robert <tomiak.robert@epa.gov> wrote:

Very helpful; I appreciate the update. Given the visibility, I think we need to provide a status update to Byron; perhaps a one page issue paper. I will vet whatever you all draft with OW here before anything is sent forward by either of us.

Thanks, Rob

On Apr 11, 2017, at 3:08 PM, Moutoux, Nicole <Moutoux.Nicole@epa.gov> wrote:

Hello all

**Deliberative Process / Ex. 5**

## Deliberative Process / Ex. 5

Please feel free to call us with  
any questions or if you'd like more  
information.  
Thanks  
Nicole

*Nicole G. Moutoux*  
**Assistant Director**  
**Enforcement Division, ENF-4**  
[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)  
**Office: 415-972-3012**  
**Cell: 415-271-0701**

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**From:** Tomiak, Robert  
**Sent:** Friday, April 07, 2017 5:18 AM  
**To:** Moutoux, Nicole  
<[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)>; Goforth,  
Kathleen <[Goforth.Kathleen@epa.gov](mailto:Goforth.Kathleen@epa.gov)>;  
Suriano, Elaine  
<[Suriano.Elaine@epa.gov](mailto:Suriano.Elaine@epa.gov)>  
**Cc:** Knight, Kelly  
<[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>; Marshall, Tom  
<[marshall.tom@epa.gov](mailto:marshall.tom@epa.gov)>; Johnson,  
Kathleen <[Johnson.Kathleen@epa.gov](mailto:Johnson.Kathleen@epa.gov)>  
**Subject:** RE: Rosemont letter

My first read of the letter led me to check in with Mindy Eisenberg (OW) who indicated that Jason Brush (I assume he's in your OW section?) is coordinating, so please, if appropriate, loop him in as well.

Kelly and Tom are out today, but Elaine and I could be available before noon (est); I have to head over to CEQ NLT 12:30.

It would be helpful if you have the following and can send in advance:

- ? <!--[if !supportLists]--><!--[endif]-->Our DEIS and FEIS comments letter
- ? <!--[if !supportLists]--><!--[endif]-->The letter R9 sent to USACE regarding the 404 permit concerns
- ? <!--[if !supportLists]--><!--[endif]-->A summary of discussions R9 and USACE's DE have had since then, and where both agencies stand on a response to the State rebuttal

If you all have an outline of a proposed way ahead, that would also be helpful. I'll also look for you all to signal to me/Mindy that engagement with USACE HQ would be helpful.

Thanks, Rob

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**From:** Moutoux, Nicole  
**Sent:** Thursday, April 06, 2017 5:54 PM  
**To:** Tomiak, Robert  
<[tomiak.robert@epa.gov](mailto:tomiak.robert@epa.gov)>  
**Subject:** RE: Rosemont letter

Ok – please let me know a good time and number and we'll call you.

*Nicole G. Moutoux*  
**Assistant Director**  
**Enforcement Division, ENF-4**  
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**Office: 415-972-3012**

**Cell: 415-271-0701**

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**From:** Tomiak, Robert  
**Sent:** Thursday, April 06, 2017 2:51 PM  
**To:** Moutoux, Nicole  
<[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)>  
**Cc:** Knight, Kelly  
<[knight.kelly@epa.gov](mailto:knight.kelly@epa.gov)>; Marshall, Tom  
<[marshall.tom@epa.gov](mailto:marshall.tom@epa.gov)>  
**Subject:** Re: Rosemont letter

I don't think Kelly will be in, but yes,  
let's discuss.

Rob

On Apr 6, 2017, at 5:46 PM, Moutoux,  
Nicole <[Moutoux.Nicole@epa.gov](mailto:Moutoux.Nicole@epa.gov)>  
wrote:

Hi Rob-

Thanks for the  
conversation today. I  
know you are all are  
juggling a lot – I think it  
helps for staff to hear  
the context. On  
another note, I'm  
checking in on  
Rosemont. We  
received a copy of a  
letter sent to  
Administrator Pruitt  
from AZ governor and  
there are few other  
things going on related  
to the project. Are you  
and Kelly available  
tomorrow to speak  
with me and Kathy  
Goforth.

Thanks  
Nicole

*Nicole G. Moutoux*  
**Assistant Director**  
**Enforcement**  
**Division, ENF-4**  
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